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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Petition for Expedited Rulemaking To	)	DA No. 97-1211
Establish Reporting Requirements and	)	
Performance and Technical Standards for	)	RM 9101
Operations Support Systems	)	

Comments of the Competition Policy Institute

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July 10, 1997

SUMMARY

The Competition Policy Institute supports the Petition for an Expedited Rulemaking (Petition) of LCI International Telecom Corp. and Competitive Telecommunications Association. The Commission will hasten the arrival of local exchange telephone competition if it adopts rules for reporting requirements, performance standards, technical standards and enforcement details surrounding its requirement for access to operations support systems (OSS) adopted in the *First Report and Order* implementing Section 251 of the Communications Act.

The relief sought in this Petition will remove a major barrier that prevents new entrants from competing fairly with incumbent telecommunications providers. The Commission's action will benefit consumers by smoothing the transition to a competitive local exchange market and making it more likely that consumers will actually have a choice of local carriers. But **the Commission's action will also benefit incumbent local exchange carriers.** Adopting uniform standards for access to OSS functions will clearly establish the expectations of ILECs and will eliminate any confusing or conflicting demands placed on the incumbents by competitors. Further, since compliance with the Commission's OSS requirements is a necessary precondition for entry into interLATA markets, the Commission can speed up the process of BOC entry into long distance.

CPI supports the suggestion in the Commission's Public Notice that it undertake a negotiated rulemaking. The OSS issue is difficult for two reasons: i) it is a significant competitive issue; and ii) it involves a set of extremely complex technical issues. The Commission would be well

advised to allow the industry participants (and other parties of interest) to develop rules that accommodate the difficult technical issues surrounding OSS standards, measurement and reporting. In these comments, CPI recommends certain principles that should accompany a negotiated rulemaking.

CPI also urges the Commission to integrate its efforts on access to OSS functions with its obligations to review applications for interLATA entry by the BOCs under Section 271 of the Communications Act. Specifically, the Commission should require that future applications under Section 271 contain reports of compliance with the standards adopted in this rulemaking.

The Commission must also craft an effective *and efficient* system to enforce the requirements of the rules adopted in this case. The simple fact is that non-compliance with OSS requirements can be strategically useful and financially valuable to an ILEC that chooses to employ the tactic of non-compliance. A competitor's marketing organization can be neutralized and its reputation badly damaged if the competitor cannot provide customers with timely and seamless customer services such as pre-ordering, order fulfillment and repair scheduling. The Commission must adopt penalty provisions for non-compliance that are more meaningful than symbolic financial penalties. If the Commission adopts monetary penalties for enforcement, they should be tied to the damages which non-compliance causes the injured competitor. Alternatively, CPI suggests that the Commission could "make the punishment fit the crime": the failure of a BOC to provide comparable and non-discriminatory OSS access could result in the suspension of authority for the BOC to market long distance services, even if interLATA entry has already been granted.

COMMENTS OF THE COMPETITION POLICY INSTITUTE
PUBLIC NOTICE DA NO. 97-1211

I. Introduction

The Competition Policy Institute (CPI) hereby submits its comments on the Petition for Expedited Rulemaking (Petition) filed by LCI International Telecom Corp. (LCI) and Competitive Telecommunications Association (CompTel) on May 30,1997.[1] CPI is an independent, non-profit organization that advocates state and federal policies to promote competition for telecommunications and energy services in ways that benefit consumers. CPI supports the Petition of LCI and CompTel because the relief sought in the petition will enhance the opportunity for competition in the local exchange market. This will lead, in turn, to lower prices, new services, and more choices for consumers of telecommunications services.

II. The Need For an Expedited Rulemaking

Access to operations support systems may well be the Achilles heal of local competition. In state after state, new entrants find they cannot construct competitive networks combining their facilities with unbundled network elements of the incumbent LECs without access to OSS functions that is far superior to what is now offered. Evidence is building that existing order processing systems are inadequate to the task. For their part, incumbents are faced with differing and conflicting demands from competitors and regulators. The inferior level of compliance with the FCC's requirement of OSS access clouds the BOCs' ability to gain approval to enter

[1]Comments were requested by the FCC in its Public Notice issued June 10, 1997 (DA 97-1211).

interLATA markets. On the consumer side, CPI believes that much of the widespread dissatisfaction with the marketplace progress of local competition can be traced to inadequate access to "back office" systems of the incumbent local exchange companies. The failure of the LECs to provide access to OSS functions in full compliance with the Commission's prior order has caused new entrants to delay their entry into local service competition and to make their entry attempts less successful.

The Commission recognized the critical nature of access to OSS functions in its *First Report and Order* implementing the competition provisions of the Telecommunications Act of 1996: "We find that it is absolutely necessary for competitive carriers to have access to operations support systems functions in order to successfully enter the local service market."[2] The Commission specified the elements of OCC access: "We conclude that an incumbent LEC must provide non-discriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself."[3] In its order, the Commission required ILECs to design and implement systems that provide non-discriminatory access to OSS functions by January 1, 1997.

While some progress has undeniably been made since January 1 toward adequate systems for access to OSS functions, the industry is collectively far short of the goal six months after the

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[2] *First Report and Order*, ¶521.

[3] *Id.*, ¶522.

Commission's order. This half year has been filled with contentious claims between ILECs and CLECs about the design, standards, efficacy and comparability of OSS functions provided to new entrants. Without further intervention by the FCC at this time, it is difficult to see how the issue will be resolved any time soon. Without uniform standards, it is impossible for new entrants or regulators to measure compliance with the Commission's requirement of parity. Without uniform standards, the CLECs and the ILECs seem to inhabit a Tower of Babel even trying to communicate about the issue. CPI believes strongly that it is appropriate for the Commission to re-enter the debate about access to this critical component of local competition and adopt rules regarding the performance and technical standards for access to OSS functions.

In brief, the Commission should adopt rules as requested by LCI and CompTel for three basic reasons:

1) It is necessary to follow through on the start made in the Commission's *First Report and Order* by providing uniform standards for OSS compliance.

2) Enhanced compliance will benefit consumers and fulfill the reasonable expectation of consumers that they should be able to exercise choice for local carriers.

3) Rules will benefit both new entrants and incumbent local exchange companies.

The Petition highlights the four issues of standards, measurement, comparability and enforcement. CPI supports the request that ILECs be required to state the internal standards to which they hold themselves so that the Commission and CLECs can determine whether ILECs are offering comparable service to CLECs. In areas where explicit standards do not exist, it is appropriate for the Commission to require the industry to adopt standards. CPI agrees with the

requirement that measurement and reporting processes be specified so that comparability can be judged in the future. Finally, the FCC must enforce compliance with these service quality standards.

It is certainly an overworked observation that consumers have been disappointed by the progress of growth in local exchange competition. As stated earlier, CPI believes that failure to develop adequate OSS access is one key to the delays, especially in mass market local exchange competition.

On the other hand, plunging into local competition without adequate electronic interfaces among competitors would have created an even worse situation. While there have been some rough spots with interexchange competition (e.g., slamming), consumers have grown accustomed to the ease with which they can choose among competing long distance carriers. They will hold the same expectations of local competition and will react badly to bungled attempts by competing carriers to complete simple transactions like ordering, adding services and scheduling repairs. "In this age of computers" consumers have a reasonable expectation that such transactions will go smoothly. The industry and its regulators owe it to consumers to deliver on this expectation.

The airline industry provides a useful model for the kind of electronic interfaces that will be needed in a competitive telecommunications industry. Dozens of competing airlines and tens of thousands of competing independent agents share an airline reservation system that handles order taking, order modification, refunds and even details as small as seat assignments and meal

preferences. All agents and airlines share comparable access to a reservation database that is updated continuously, has an efficient, standard electronic interface and permits the transparent settlement of financial transactions. As a result, consumers can place or change an order--or even switch service from one airline to another--in a relatively simple exercise.

Telecommunications consumers deserve no less. Customers should experience a seamless transition when changing service between competing local exchange carriers. When placing an order with any carrier (ILEC or CLEC) customers should not be subjected to delays for a business agent to check on provisioning information and call back. There should be no delays in the provisioning of such items as telephone number assignment, confirmation of service availability and estimates of installation dates. Even more critical is that consumers receive accurate and timely repair appointments. Coordinating these complicated processes will require a system of sophisticated interfaces among competing companies.

Such a system is far from being in place. The FCC correctly identified the importance of the OSS issue in its *Local Competition Order* last year. It is now time to follow through on that Order by enabling its implementation and pushing compliance to the next level. CPI submits that uniform minimum standards, measures and enforcement are necessary to achieve that result.

CPI believes that uniform minimum standards and expectations for access to OSS functions will benefit not only local competition and new entrants, but also the incumbent carriers that are required to provide non-discriminatory access to OSS functions. Uniform standards will "clear

the air" and remove any conflicting demands by competitors. CPI also notes that failure to comply with the Commission's OSS requirements may prove to be the downfall of some BOCs' attempts to gain interLATA authority under Section 271 of the Communications Act. Uniform standards and reporting requirements for OSS functions will provide unmistakable targets, making it far easier for the BOCs, the Commission and all parties to judge the adequacy of the compliance with this provision of the competitive checklist in Section 271 proceedings.

This proceeding affords the opportunity for state and federal regulators to coordinate their efforts on OSS compliance. CPI agrees with the Petitioners that the FCC should require the ILECs to state the internal standards that now apply to OSS functions and should establish minimum standards where none exist. States should be able to adopt OSS standards that are stronger than the minimum requirements set by the FCC. CPI also observes that a state commission effectively determines existing standards by the quality of service rules it adopts which are applicable to retail services of the incumbent providers. For example, a state commission's rules setting standards for held orders for the retail customers of a LEC drives the existing standard for held orders for unbundled network elements or total resale service provided to a CLEC. For this reason, the state commissions should be central players in developing the minimum standards through the proceeding sought by the Petitioners in this case. CPI discusses below the conditions under which the Commission should consider a negotiated rulemaking. An essential feature of a successful negotiation will be the involvement of state regulators. Further, CPI believes that the rulemaking will profit from the participation of consumer representatives since these issues are so close to the important consumer concerns of local competition and service quality.

CPI agrees with the Petitioners that, collectively, we have a long way to go on compliance with the OSS requirement contained in the FCC's First Report and Order. The problem is that, without uniform minimum standards and measurement, it is difficult to know how far we have to go and the rate of progress. But two things are clear: i) the success of local competition hinges on the industry developing functional OSS interfaces and ii) we are just beginning to feel the effect of the issue. The numbers are hard to exaggerate. If new entrants (collectively) are expected to win only 30% of the access lines in the next five years, they must win, on a net basis, 42,000 access lines every business day for the next five years. Given churn, "win backs" and the need for multiple communiques between competing carriers to effectuate the switch of a single customer and maintain that customer's service, OSS systems must be able to handle many times that number of transactions per day.

The bottom line is that consumers are not seeing choices, even for local resale. The case is clear for the need for FCC action. The Petitioners are recommending a practical solution to the Gordian Knot of OSS compliance upon which the FCC should act.

III. The Use of Negotiated Rulemaking

In its Public Notice in this docket, the Commission requested comment on whether it should undertake a "negotiated" rulemaking. With some qualifications, CPI endorses the concept of using negotiation to arrive at draft rules.

CPI suggests that negotiated rulemakings are more likely to be successful if they have certain

attributes:

1) The Commission should impose strict time limits on the negotiations.

2) The Commission should require the negotiations to permit the involvement of all parties of interest, including state regulators and consumer representatives.

3) Negotiating parties should understand that failure to reach agreement means that the Commission will promulgate rules anyway.

4) Assuming negotiations permit involvement by all parties of interest, the Commission should accord substantial deference to the agreements worked out in the negotiations.

5) The Commission should not accept partial stipulations that do not represent a consensus, but should accept agreements that address fewer than all the issues.

6) The Commission should consider designating a neutral facilitator to assist the negotiations.

7) The Commission should ensure that negotiators have access to data needed to make negotiations productive.

Time frames The OSS issue requires quick resolution because it represents a major barrier to local exchange competition. The Commission should undertake a negotiated rulemaking only if it will likely improve the result of the rulemaking and take less time. The Commission should not allow any party to delay resolution of the issues by the use of negotiations. The best way to avoid this outcome is to impose a stringent deadline which could be extended only at the request of all the parties to the negotiation. CPI suggests that it will be clear within four weeks of the beginnings of negotiations whether the parties have sufficient incentives to produce a negotiated result. If more time than four weeks is needed, parties may request it.

Involvement of All Parties of Interest A negotiated rulemaking should be structured to

ensure that all parties of interest have, at their election, a realistic opportunity to participate. In particular, the Commission should ensure that state regulators and consumer representatives are involved in the negotiations. The Commission has experience with involvement by state regulators and consumer representatives in another forum that dealt with technical issues — the Network Reliability Council.

Result of Failure of Negotiations Negotiations will succeed only if parties know that the failure of negotiations means that the Commission will make a decision anyway. Stated another way, the Commission should make it clear that the negotiations concern *what* the rule will say, not *whether* there will be a rule.

Substantial Deference to the Outcome of Negotiations Assuming that all parties of interest have the opportunity to participate in the negotiations, the Commission should commit at the outset that it will give substantial deference to the agreements of the parties. The Commission cannot delegate its rulemaking authority to the parties, but it can use the agreement as the basis for its proposed rules and give considerable weight to the fact that the proposed rule represents a consensus of interested parties.

Partial Results The Commission should make it clear that the negotiators may report partial results of the negotiations, (e.g., agreement on three of five issues), but should not accept a report which does not have consensus support of the negotiators.

Facilitator The Commission should consider whether it should require the parties to use a neutral facilitator to assist in the negotiations.

Data Needs Negotiations will not succeed unless all parties have sufficient information on which to base their positions. The Commission should require that participants provide such information as internal standards for all OSS functions for which standards exist prior to the inception of negotiations.

IV. Connection of OSS Rules to Section 271 Applications

ILEC compliance with the Commission's requirements for OSS access is important to the new entrants because it is central to their ability to look and feel like a telephone service provider that consumers will trust. For the BOCs, compliance is important because it is a *sine qua non* of their entry into the interLATA market. The connection between OSS compliance and interLATA entry will become clearer with each Section 271 application that the Commission receives.

CPI suggests that the Commission should explicitly link the issues raised in this proceeding with Section 271 applications. Specifically, the Commission should underscore its commitment to full compliance with the language in its *First Report and Order* by requiring that Section 271 filings by BOCs be accompanied by reporting in the format developed in this rulemaking. This filing requirement will improve the process of reviewing Section 271 applications by streamlining the review of compliance with the competitive checklist.

V. Enforcement

Eventually, the entire U.S. telecommunications industry will conclude that a robust, transparent electronic interface is in its collective best interest. As in the airline industry, it will eventually be critical for every provider to be linked with a full-featured non-discriminatory electronic interface that enables fair competition. Eventually, "incumbents" and "competitors" will be simply "competitive service providers."

But until competition takes hold fully and all competitors see a robust OSS system as mutually beneficial, the Commission must act to enforce compliance with its requirement for parity of access. Today's incumbent providers still have a strong incentive to discriminate against potential competitors by providing inferior access to OSS features. The provisions of Sections 251 and 271 of the Communications Act provide some incentives, at least to some of the incumbent LECs, to deploy systems that afford non-discriminatory access to "back office" systems. But those incentives are undoubtedly weighed against the costs of loss of market share that new entrants will inevitably cause. The stakes are high. A competitor's marketing organization can be neutralized and its reputation badly damaged if the competitor cannot provide customers with timely and seamless customer services such as pre-ordering, order fulfillment and repair scheduling. CPI recommends that the Commission adopt enforcement penalties that recognize the substantial value that strategic non-compliance can yield. There are two possible approaches: monetary penalties and "structural" penalties.

If the Commission adopts a system of monetary fines, they must be substantial enough to

dissuade a carrier from adopting non-compliance as a strategy. The Commission should not set penalties at an arbitrary monetary level, but should tie them to the damage caused to a potential competitor. In this sense, these penalties are not fines, but more nearly liquidated damages.

Alternatively, the Commission could "make the punishment fit the crime." A carrier that discriminates against competitors by providing discriminatory access to OSS will have failed to meet the continuing obligations of Section 251 of the Communications Act. In the case of a BOC, the Commission could withdraw its approval of the BOC's authority to provide interLATA service. In practice it may not serve the public interest to require the BOC to cease providing interLATA service after it has obtained customers, but the Commission could reasonably require the offending BOC to cease marketing interLATA services to new customers and stop accepting customer orders until compliance with the OSS requirement has been reestablished.

VI. Specific Rule Language

CPI will defer at this time to the Petitioners and other industry participants in this docket (or to the results of negotiated rulemaking) for the specific technical standards and measures of service quality. LCI and CompTel have provided model technical standards as part of their application which appear to be reasonable. CPI reserves the option to comment further on this issue in response to the comments of other parties in this docket.

VII. Conclusion

CPI supports the Petition of LCI and CompTel and agrees with the need for the Commission to act expeditiously to put rules in place. If the Commission elects to use a negotiated rulemaking, CPI requests that it have the opportunity of participating in the negotiations.

Respectfully Submitted,

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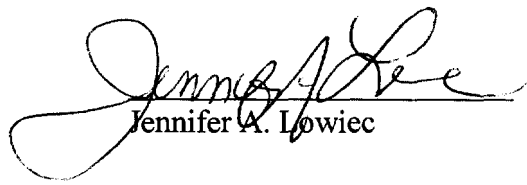
CERTIFICATE OF SERVICE

I, Jennifer Lowiec, do hereby certify that on the 10th day of July, 1997, a copy of the foregoing Comments the Competition Policy Institute was caused to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



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